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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 LOUIS V. SCHOOLER and FIRST
16 FINANCIAL PLANNING
17 CORPORATION d/b/a WESTERN
18 FINANCIAL PLANNING
19 CORPORATION,

20 Defendants.

Case No.: 3:12-cv-2164-GPC-JMA

ORDER APPROVING:

**SALE OF ABL/MEX-TEC
PROPERTY AND AUTHORITY TO
PAY BROKER'S COMMISSION**

[ECF No. 1719]

21 Before the Court is the Receiver's Motion for (A) Approval of Sale of ABL/Mex-
22 Tec Property, and (B) Authority to Pay Broker's Commission ("Motion"). ECF No.
23 1719. No opposition was filed. Based upon a review of the moving papers and the
24 applicable law, the Court **GRANTS** the Receiver's motion.

BACKGROUND

25 **A. The SEC Enforcement Action**

26 On January 21, 2016, the Court granted the SEC's motion for final judgment
27 against Defendant Louis V. Schooler. ECF No. 1170. The Court granted the SEC's
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1 motion for revised final judgment on June 4, 2019. ECF No. 1724. The SEC had
2 initiated this civil action against Defendant Schooler and Western Financial Planning
3 Corporation (“Western”) four years earlier, on account of their practice of defrauding
4 investors into purchasing unregistered securities. *Id.* (citing Second Summary Judgment
5 Order, ECF No. 1081). To carry out the scheme, Defendant Western bought
6 undeveloped real estate, with cash or through financing, and simultaneously formed one
7 or more General Partnerships (“GPs”) to own the land. First Summary Judgment Order,
8 ECF No. 1074 at 10. Western then sold General Partnership units to investors and sold
9 the undeveloped real estate to the General Partnerships. *Id.* at 10. In total, Western
10 raised approximately \$153 million from almost 3,400 investors through implementing
11 this scheme. *Id.*

12 **B. The Decline of the General Partnership Assets**

13 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
14 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at
15 2. Those professionals determined that the land was worth \$16,328,000 and that the net
16 appraised value (appraised value less outstanding balances on all mortgages) of the
17 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the
18 total funds that the general partners had invested in the land. *Id.* The Receiver further
19 estimated that, based on the then-current appraised values of the land, the average GP
20 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

21 Three years later, soon after final judgment was entered, the Receiver moved for
22 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly
23 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated
24 that the aggregate value in the GP accounts had been steadily decreasing while litigation
25 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.
26 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had
27 reason to believe that the value of the Receivership would continue to drastically
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1 decrease through the end of 2016.¹ This decline, he noted, was due to three main factors:
2 (1) 14 of the 23 properties were not appreciating in value²; (2) the properties were not
3 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of
4 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,
5 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,
6 the Receiver concluded, because the money being spent to hold the GP properties was
7 disproportionately high in relation to the value of the GP's real estate assets, the
8 Receivership was in a steady decline. *Id.*

9 In order to prevent the value of the Receivership from falling into further decline,
10 the Receiver proposed that the GP properties be sold in accordance with Court-approved
11 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to
12 maximize the value of all of the GP assets for the benefit of all investors, irrespective of
13 any given investors' direct property interest, was to initiate an orderly sale of the GP
14 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of
15 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.
16 *Id.* at 16.

17 **C. The Receiver's Motion for Orderly Sale**

18 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly
19 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the
20 investor-intervenors — that is, those investors who were granted permission under Rule
21 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time
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25 ¹ The Receiver provided the Court with projections that the Receivership would further decline to \$1.8
26 million by the end of 2016. Indeed, the Receiver's projection has since proved to be accurate. The
27 Twentieth Interim Status Report submitted by the Receiver indicates that the Receivership's current cash
28 and cash equivalent balance is \$666,113. ECF No. 1505 at 17.

² By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was
about \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

1 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale
2 process.³ ECF No. 1304.

3 In approving the Orderly Sale, the Court addressed and evaluated the concerns
4 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing
5 positions on whether the Orderly Sale would benefit the Receivership estate. *See*
6 *generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon
7 Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240,
8 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration
9 the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF
10 No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the
11 Receiver on how to maximize the value of the Receivership estate and, for the most part,
12 agreed on the appraised value of the various GP properties. *Id.* As such, the Court
13 directed the Receiver, where feasible, to incorporate the recommendations of the Xpera
14 Report into his ultimate Orderly Sale proposal. *Id.* at 19.

15 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real
16 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera
17 Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016.
18 ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016.
19 ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a
20 report evaluating the Xpera Report recommendations. ECF No. 1405. The Court
21 reviewed the Receiver's report and adopted the recommendations contained therein on
22 December 12, 2016. ECF No. 1423.

23 **D. ABL/Mex-Tec Property**

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27 ³ The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public
28 sale process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a
modified proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on
August 30, 2016 (ECF No. 1359).

1 ABL/Mex-Tec Property (the “Property”) includes undeveloped land located in San
2 Diego County, California. ECF. No. 1719-1 at 2. The Property is one of the properties
3 that collectively are known as the “Tecate” properties, all of which are located in the San
4 Diego area. *Id.* Prior to being transferred to the Qualified Settlement Fund Trust, the
5 Property was held outright by two General Partnerships—ABL Partners and Mex-Tec
6 Partners. *Id.*

7 On March 7, 2016, the Receiver recommended that the Tecate properties be listed
8 for sale with Real Blue Properties⁴ (“Broker”), a licensed broker located in the San Diego
9 area, with the Vista Property listed for \$100,000. *Id.* On May 25, 2016, the Court
10 approved the Receiver's recommendation. *Id.* Broker promptly listed and advertised the
11 Tecate properties for sale and marketed them to interested parties via the Multiple Listing
12 Service (MLS) by placing “For Sale” signs on the properties, attending Broker Caravan
13 marketing sessions, and publicizing the Tecate property listings. *Id.* Broker has
14 responded to over 70 phone calls and emails about the properties from interested parties
15 and toured the properties with interested parties on over 47 separate occasions. *Id.* at 2–
16 3.

17 In 2013, the Receiver obtained an appraisal of the Property estimating the value to
18 be \$220,000. *Id.* at 3. Two years later, in 2015, the Receiver obtained a broker opinion
19 of value for the Property estimating the value to be \$180,000. *Id.* In early 2016, Xpera
20 Group valued the Property between \$173,000 and \$346,000—but this valuation was
21 based on the Property being held for an indefinite period until San Diego County finalizes
22 the development in the area. *Id.* The Court expressly rejected the indefinite timing
23 proposed by Xpera. ECF No. 1304 at 18.

24 The County has been working on this development plan for over 30 years and there
25 is no current timeframe for when the development plan will be finalized. ECF No. 1722-
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28 ⁴ Real Blue Properties subsequently changed its name to Resonate Real Estate.

1 at 3. Additionally, Xpera noted the very limited sales transactions in the area, explaining that in 2014 and 2015, only two properties sold each year and that “the sale of properties in Tecate has virtually ground to a halt.” *Id.* Additionally, in their schedule detailing transactions that took place between 2012 and 2015, almost all transactions in the area were for between \$25,000 and \$42,000. The only exception was a property that sold for \$250,000, which they noted was different from the Tecate properties in that it was a “prime property directly on the border.” *Id.*

Unfortunately, no offers for the Property were received for many months after it was listed. The Receiver, in consultation with Broker, determined that gradually reducing the list price was the best course of action to generate more interest in the Property. Accordingly, the list price was gradually reduced until it reached \$199,000, at which point an offer for \$189,000 was received from Mariano V. Serratos (“Buyer”). The Receiver gave notice of the offer to investors and entered into negotiations with Buyer. The Receiver and Buyer then executed a Vacant Land Purchase Agreement and Joint Escrow Instructions (“Agreement”), subject to overbid and Court approval, with a purchase price of \$189,000. On May 1, 2019, Buyer removed all contingencies (other than Court approval). On July 24, 2019, the Receiver notified the Court that no qualified overbids had been received for the Property. ECF No. 1738.

E. Conclusion

The Court finds that the purchase price of \$189,000 is reasonable in light of the facts that the sale of Tecate properties has virtually ground to a halt and the Court previously declined to direct the Receiver to hold the Tecate properties for an indefinite period of time. There are very limited sales transactions in the area, and of these limited transactions, almost all were for between \$25,000 and \$42,000. The Property has been thoroughly marketed over the last 36 months and \$189,000 is the best and only offer received. Moreover, the purchase price of \$189,000 exceeds the 2015 broker opinion value of \$180,000.

1 The Court is also satisfied that the Receiver’s notice of the sale adhered to the
2 modified Orderly Sale procedures—which require that notice of the sale be published “in
3 the county, state, or judicial district of the United States *wherein the realty is situated*,”
4 28 U.S.C. § 2002 (emphasis added)—by publishing notice in the San Diego Union-
5 Tribune, a newspaper of general circulation in San Diego County, and by providing
6 notice to the investors.

7 Accordingly, and given that no opposition to the present Motion has been filed or
8 raised, and no qualified overbid was received, the Court **GRANTS** Receiver’s motion for
9 approval of sale.

10 **ORDER**

11 The Motion for (A) Approval of Sale of ABL/Mex-Tec Property, and (B)
12 Authority to Pay Broker's Commission (“Motion”) filed by Thomas C. Hebrank
13 (“Receiver”)—the Court-appointed receiver for First Financial Planning Corporation
14 d/b/a Western Financial Planning Corporation (“Western”), its subsidiaries, and the
15 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on
16 March 13, 2013—having been reviewed and considered by this Court, the Receiver
17 having notified the Court that no qualified overbid has been received, and for good cause
18 appearing therefore, the Court finds as follows:

19 1. The Motion is **GRANTED**;

20 2. The sale of the Property known as the ABL/Mex-Tec Property (“Property”),
21 as described on Exhibit A to the Declaration of Thomas C. Hebrank in support of the
22 Motion, by Thomas C. Hebrank, as receiver, to Mariano V. Serratos (“Buyer”) is
23 confirmed and approved;

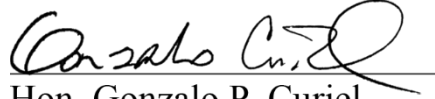
24 3. The purchase price of \$189,000 for the Property is confirmed and approved;

25 4. The Receiver is immediately authorized to complete the sale transaction,
26 including executing any and all documents as may be necessary and appropriate to do so;
27 and
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1 5. The Receiver is authorized to pay, upon closing of the sale, a commission of
2 9% of the final purchase price to broker Resonate Real Estate.

3 **IT IS SO ORDERED.**

4 Dated: July 26, 2019


Hon. Gonzalo P. Curiel
United States District Judge